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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
27 January 1949

UNITED STATES OF AMERICA VS TAMOTSU FURUKAWA
UNITED STATES OF AMERICA VS GOSUKE TANIGUCHI
UNITED STATES OF AMERICA VS TAKAO SANOKAWA
(Also known as HISAO SANOKAWA)
UNITED STATES OF AMERICA VS SAZAE CHIUMA
UNITED STATES OF AMERICA VS YOSHIYOTSU MORITAMA
UNITED STATES OF AMERICA VS TOSHISUKE TANABE
UNITED STATES OF AMERICA VS KEIICHI NOZAKA
UNITED STATES OF AMERICA VS YOSHISA NAKATA
UNITED STATES OF AMERICA VS TOSHIOKA MAEDA
(Also known as TOKIOKA MAEDA)
UNITED STATES OF AMERICA VS KATSUTO IMAI
(Also known as KATSUSHITO IMAI)

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Tamotsu Furukawa, Gosuke Taniguchi, Takeo Sanokawa (also known as Hisao Sanokawa), Sazae Chiuma, Yoshiyotsu Moritama, Toshisuke Tanabe, Keiichi Nozaka, Yoshisa Nakata, Toshioka Maeda (also known as Tokioka Maeda), and Katsuto Imai (also known as Katsushito Imai), tried at Yokohama, Japan from 24 May 1948 to 14 July 1948, by a Military Commission appointed by paragraph 25, Special Orders No. 115, Headquarters Eighth Army, United States Army, dated 20 May 1948, having been referred to the Staff Judge Advocate this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Tamotsu Furukawa	DATE OF CONFINEMENT: 30 August 1947
AGE: 55	DATE OF ARRAIGNMENT: 24 May 1948
RESIDENCE: #280 Ozushi, Yokosuka City, Kanagawa Ken	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 24 May 1948 to 14 July 1948
RELATIVES: Wife, son, 2 daughters	DATE OF SENTENCE: 14 July 1948
EDUCATION: Graduated primary school. Middle school, 1911; Naval Cadets School, 1915; Naval Gunnery School and torpedo school, 1919; Naval torpedo school high grade, 1921	SENTENCE: CHL for 20 years
VOCATION: No occupation	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 1915 to 1944 in Japanese Navy; highest rank attained, Rear Admiral	

(p 1 of 26, Furukawa et al, Case # 307)

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NAME: Gosuke Taniguchi
AGE: 56
RESIDENCE: #8 Mitakoyamacho,
Minato-Ku, Tokyo
MARITAL STATUS: Married
RELATIVES: Brother, 3 sisters
EDUCATION: Graduated Naval
College
VOCATION: No occupation
MILITARY CAREER: September
1910 to December 1945; high-
est rank attained, Captain

DATE OF CONFINEMENT: 8 September
1947
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF ACQUITTAL: 14 July 1948

NAME: Takao Sanokawa (also
known Hisao Sanokawa)
AGE: 48
RESIDENCE: #1094 Uehara Chino-
cho, Suwa-Gun, Nagano Prefec-
ture
MARITAL STATUS: Married
RELATIVES: Father, mother,
wife, son, daughter
EDUCATION: Graduated the Naval
Academy in 1924
VOCATION: No occupation
MILITARY CAREER: 1925 to 1945
in Japanese Navy; highest
rank attained, Captain

DATE OF CONFINEMENT: 2 Sept. 1947
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF ACQUITTAL: 14 July 1948

NAME: Sazae Chiuma
AGE: 37
RESIDENCE: Kagoshima-ken, Aira-
gun, Higashi Kokubu-mura
MARITAL STATUS: Married
RELATIVES: Father and Mother
EDUCATION: Junior High school
VOCATION: None
MILITARY CAREER: Imperial Japa-
nese Navy from 1930 to 1944,
highest rank attained, Ensign

DATE OF CONFINEMENT: 1 June 1948
DATE OF ARRAIGNMENT: None
DATE OF NOLLE PROSEQUI: 24 May
1948 (R 1)

NAME: Yoshiyotsu Moritama
AGE: 54
RESIDENCE: #517 Ikeda Imazu,
Onoe Mura, Kato Gun, Hyogo
Ken
MARITAL STATUS: Married
RELATIVES: Wife, 2 sons
EDUCATION: Primary school,
1903; Middle school, 1910;
Naval college, 1915
VOCATION: No occupation
MILITARY CAREER: September 1918
to August 1945; highest rank
attained, Captain

DATE OF CONFINEMENT: 17 March
1948
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF SENTENCE: 14 July 1948
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY
COMMISSION: No

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NAME: Toshisuke Tanabe
AGE: 28
RESIDENCE: #441 Fjuiooku,
Otsushi-Shi, Shiga Ken
MARITAL STATUS: Single
RELATIVES: Father, mother,
brother
EDUCATION: Grammar School, 3
years, High School, 5 years;
Naval Academy, 3 years
VOCATION: Office worker
MILITARY CAREER: November 1942
to August 1945; highest rank
attained, Lieutenant Senior
Grade

DATE OF CONFINEMENT: 16 April
1948
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF SENTENCE: 14 July 1948
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY
COMMISSION: No

NAME: Keiichi Nozaka
AGE: 45
RESIDENCE: #1129 Uchihamu
Yasugi-Machi, Mogi-Gun,
Shimane Ken
MARITAL STATUS: Married
RELATIVES: Mother, brother,
wife, son, 2 daughters
EDUCATION: 9 years
VOCATION: Office worker
MILITARY CAREER: June 1923 to
May 1946; highest rank at-
tained, Lieutenant Senior
Grade

DATE OF CONFINEMENT: 16 March
1948
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF SENTENCE: 14 July 1948
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY
COMMISSION: No

NAME: Yoshisa Nakata
AGE: 41
RESIDENCE: 438-1 Niyo Machi
Te, Mitoyo Gun, Kagoawa Ken
MARITAL STATUS: Married
RELATIVES: Wife, 2 sons,
daughter
EDUCATION: 12 years, in-
cluding 3 years Navy
Artillery School
VOCATION: Spinner Industry
worker
MILITARY CAREER: June 1926
to March 1941; highest rank
attained, Ensign

DATE OF CONFINEMENT: 16 March
1948
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF SENTENCE: 14 July 1948
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY
COMMISSION: No

NAME: Toshioka Maeda (Also
known as Tokioka Maeda)
AGE: 27
RESIDENCE: #2200 Shimo Tsurusa-
ki, Tsurusaki Machi, Oita-Gun,
Oita-Ken
MARITAL STATUS: Single
RELATIVES: Father, mother, 2
sisters, brother
EDUCATION: Graduate of Meiji
College of Technology, 1945
VOCATION: Chemical Engineer
MILITARY CAREER: 1 October 1943
to 16 June 1946 in Japanese
Navy, highest rank attained
Lieutenant Junior Grade.

DATE OF CONFINEMENT: 19 April
1948
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to
14 July 1948
DATE OF SENTENCE: 14 July 1948
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY
COMMISSION: No

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NAME: Katsuto Imai (Also known as Katsushito Imai)
AGE: 34
RESIDENCE: #774 Shibori Maebi, Nakatsushi Shi, Oita Ken
MARITAL STATUS: Married
RELATIVES: Father, mother, wife, 3 sons
EDUCATION: 6 years, Grammar School; 4 years, High School
VOCATION: Second hand shop operator
MILITARY CAREER: June 1932 to September 1945; highest rank attained, Ensign

DATE OF CONFINEMENT: 18 March 1948
DATE OF ARRAIGNMENT: 24 May 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 May 1948 to 14 July 1948
DATE OF ACQUITTAL: 14 July 1948

2. Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

<u>Charges and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
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CHARGE I: That the following members of the Imperial Japanese Navy, with their then known titles: Tamotsu FURUKAWA, Rear Admiral, Gosuke TANIGUCHI, Captain, Takao SANOKAWA (also known as Hisao SANOKAWA), Commander, Sazae CHIUMA, Ensign, at the times and places set forth in the specifications hereto attached and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

(Consolidated with Charge II, as to the accused, FURUKAWA, TANIGUCHI and SANOKAWA. Molested as to the accused CHIUMA, R 1, 23)

Sp 1: That Tamotsu Furukawa, Rear Admiral, as Commanding Officer of the 23rd Air Unit, Imperial Japanese Navy, based on Celebes Island, Netherlands East Indies, together with Gosuke Taniguchi, Takao Sanokawa and Sazae Chiuma and other individuals, pursuant to a common plan and intent, between November 20 and November 27, 1944, did willfully and unlawfully participate in, order, permit, allow, and approve the killing of Joseph John Sommer, Edwin Charles McMaster, Walter Grant Price, and Henry Theodore Zollinger, all members of the armed forces of the United States of America, and who were then prisoners of war, by striking them with swords.

(Consolidated with Sp 1 of Charge II, R 23)

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Sp 2: That Gosuke Taniguchi, as Captain, Commanding Officer of the 23rd Special Naval Base detachment, Imperial Japanese Navy, at Kendari, Celebes Island, Netherlands East Indies, together with Tamotsu Furukawa, Takao Sanokawa, Sazae Chiuma, and other individuals, pursuant to a common plan and intent, between November 20 and November 27, 1944, did willfully and unlawfully participate in, order, direct, permit, allow, and approve the killing of Joseph John Sommer, Edwin Charles McMaster, Walter Grant Price, and Henry Theodore Zollinger, all members of the armed forces of the United States of America, and who were then prisoners of war, by striking them with swords.

(Consolidated with Sp 1 of Charge II, R 23)

Sp 3: That Takao Sanokawa, as Commander, Chief of Staff of 23rd Air Unit, Imperial Japanese Navy, based on Celebes Island, Netherlands East Indies, together with Tamotsu Furukawa, Gosuke Taniguchi, Sazae Chiuma, and other individuals, pursuant to a common plan and intent, between November 20 and November 27, 1944, did willfully and unlawfully participate in, order, direct, permit, allow, and approve the killing of Joseph John Sommer, Edwin Charles McMaster, Walter Grant Price, and Henry Theodore Zollinger, all members of the armed forces of the United States of America, and who were then prisoners of war, by striking them with swords.

(Consolidated with Sp 1 of Charge II, R 23)

Sp 4: That Sazae Chiuma, as Ensign, simultaneously attached to the 23rd Special Naval Base detachment and the Tokkei Tai unit, Imperial Japanese Navy, at Kendari, Celebes Islands, Netherlands East Indies, together with Tamotsu Furukawa, Takao Sanokawa, and other individuals, pursuant to a common plan and intent, between November 20 and November 27, 1944, did willfully and unlawfully participate in, order, direct, permit, allow, and approve the killing of Joseph John Sommer, Edwin Charles McMaster, Walter Grant Price, and Henry Theodore Zollinger, all members of the armed forces of the United States of America, and who were then prisoners of war, by striking them with swords.

(Nolle-prossed, R 1, 23)

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CHARGE II: (As amended, R 23)

That the following members of the Imperial Japanese Navy, with their then known titles: Tamotsu FURUKAWA, Rear Admiral, Gosuke TANIGUCHI, Captain, Takao SANOKAWA (also known as Hisao SANOKAWA), Commander, Yoshiyotsu MORITAMA, Captain, Toshisuke TANABE, Lieutenant, Senior Grade, Keiichi NOZAKA, Lieutenant, Junior Grade, Yoshisa NAKATA, Lieutenant, Junior Grade, Toshioka MAEDA (also known as Tokioka MAEDA), Ensign, Katsuto IMAI (also known as Katsushito IMAI), Chief Petty Officer, at the time and place set forth in the specification hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the laws and customs of war.

As to Furukawa:	NG	G	No
As to Taniguchi:	NG	NG	---
As to Sanokawa:	NG	NG	---
As to Moritama:	NG	G	No
As to Tanabe:	NG	G	Yes
As to Nozaka:	NG	G	Yes
As to Nakata:	NG	G	Yes
As to Maeda:	NG	G	Yes
As to Imai:	NG	NG	---

Sp 1: (As amended, R 23) That Tamotsu Furukawa, Gosuke Taniguchi, Takao Sanokawa (also known as Hisao Sanokawa) Yoshiyotsu Moritama, Toshisuke Tanabe, Keiichi Nozaka, Yoshisa Nakata, Toshioka Maeda, and Katsuto Imai, all members of the Imperial Japanese Navy, and other individuals, near Kendari, Celebes, Netherlands East Indies, pursuant to a common plan and intent between November 20 and November 27, 1944, did willfully and unlawfully participate in, order, permit, and approve the killing of Joseph John Sommer, Edwin Charles McMaster, Walter Grant Price and Henry Theodore Zollinger, all members of the Armed Forces of the United States of America, and who were then prisoners of war, by decapitating them.

As to Furukawa:	NG	G	No
As to Taniguchi:	NG	NG	---
As to Sanokawa:	NG	NG	---
As to Moritama:	NG	G	No
As to Tanabe:	NG	G	Yes
As to Nozaka:	NG	G	Yes
As to Nakata:	NG	G	Yes
As to Maeda:	NG	G	Yes
As to Imai:	NG	NG	---

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CHARGE III: Accused Taniguchi
at the times and places set forth
in the specifications and during
a time of war between the United
States and Japan, did violate the
Laws and Customs of War.

NG

NG

Sp 1: Between 20 Nov 1944 and 27
Nov 1944, at or near Kendari,
Celebes Islands, Netherlands East
Indies, accused Taniguchi, with
others, did wilfully and unlawfully
participate in and approve the kill-
ing of four American PW's, by order-
ing, directing and allowing his sub-
ordinates to kill certain of them,
and by ordering, directing and per-
mitting his subordinates to deliver
certain others of them to members of
other commands for the purpose of
killing them.

NG

NG

Sp 2: That the accused, in December
1944, at Kendari, Celebes Island,
Netherland East Indies, did wilfully
and unlawfully order, direct, permit
and allow members of the Imperial
Japanese Navy, under his command, to
kill an unidentified woman of Allied
nationality.

NG

NG

3. Summary of the Evidence

a. For the Prosecution

Preface:

This was a common trial of nine of the above named ac-
cused, members of the Japanese Navy, and involved their participation
in November, 1944, in incidents regarding the beheading of four (4)
American naval fliers, prisoners of war, in Celebes Island, Nether-
lands East Indies.

In General:

On October 1, 1944, an American PBY while on a bombing
mission over the Netherlands East Indies, crashed-landed on the sea
near Kendari, in the Celebes. Nine survived out of the crew of eleven.
They were taken to the headquarters of the 23rd Special Naval Base,
Kendari Dispatch Unit, which was under the command of the accused
TANIGUCHI, and there placed in custody of the Naval Military Police,
the Tokkei Tai. After about seven weeks' detention, the nine POW's
were executed. The authorization for that act purportedly came from
a radiogram sent by Adm. Ohsugi, the superior officer of TANIGUCHI,
at the 23rd Special Naval Base. For the purpose of execution, the
POW's were divided into two groups of four and five persons each.
The group of four POW's was sent to various nearby units for separate
executions, and those four executions are now the subject of this trial
under review.

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The other group of five POW's, who were executed at one time at TANIGUCHI's headquarters, resulted in a War Crimes trial in the Philippines, wherein the accused TANIGUCHI, and others, were found guilty. The sentence of death on TANIGUCHI was later commuted to life imprisonment, mainly because of the legal interpretation of the radio order from Adm. Ohsugi, there being a dispute as to whether it constituted a direct order to him for the execution of the POW's, or one giving TANIGUCHI some discretion (R 3-11).

A double jeopardy plea was interposed herein on behalf of TANIGUCHI, which the trial commission sustained in effect by the finding of "not guilty" entered at the close of the prosecution's case (in the case now under review, R 3, 301).

During the trial of this case which refers to the execution of the group of four (4) POW's, the theory of the prosecution was that a request had been made by the accused Adm. FURUKAWA and his Chief of Staff, Capt. SANOKAWA (acquitted), that the four POW's be delivered to them by TANIGUCHI, so that the POW's could be executed at various other units. Adm. FURUKAWA's unit was not in the same chain of command as that of TANIGUCHI (Ex B), but Adm. FURUKAWA had a type of operational control over all units in the Kendari area, and was chief of a joint defense plan which embraced TANIGUCHI's command (Ex 14, 15). In substance, those units separated and physically located away from the headquarters of TANIGUCHI's command post, had no interest or business connected with the custody of these POW's, and their executions at the various units happened because of a gratuitous acts on the part of those units and that of the headquarters of Adm. FURUKAWA. Since Adm. FURUKAWA possessed no direct command responsibility over TANIGUCHI, except outranking him, then this action on the part of Adm. FURUKAWA was gratuitous on his part, and constituted his part of the conspiracy to have the POW's executed (R 34, 380-387). Further, that the distribution of the four POW's to the various units was in the nature of the staging of "a Roman holiday," and "a morale builder."

Two of the units were most likely under the command of TANIGUCHI, one unit definitely under the command of Adm. FURUKAWA, and one unit, nominally independent of those two persons, but apparently under the command of either TANIGUCHI or FURUKAWA (Ex B; R 353, 354).

The accused TANIGUCHI explained, (Ex 7, 15, 19; R 302, et seq, 338, 342), that since the nine (9) POW's were to be executed, he did not think it was material as to where the acts took place, merely, that he was to carry out his orders to execute the POW's. He said his original plan was to have them all executed at his own headquarters, and gave orders to his executive officer, Lt. TAKITA, to draw up a plan for that purpose. Afterwards, Lt. TAKITA came to him saying the plans had to be changed, inasmuch as Adm. FURUKAWA's headquarters desired to have four of the POW's delivered to them for execution.

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In order to make the situation clearer as to the various units and persons involved in this episode, there is given below a list of the places of execution and the names of the individuals accused as connected with each unit.

<u>POW</u>	<u>Place of execution</u>	<u>Name of Unit C.O., subordinate, and finding</u>	<u>Next highest C.O., subordinate, and finding</u>
John Sommer	Gohoku Unit; (maintenance outfit for airfield; located at Amoitto, also known as Kendari #2)	Capt. Moritama, (guilty).	Adm. Furukawa, (guilty) Capt. Sanokawa, Chief of Staff, (not guilty).
Name Unknown	29th Aerial Torpedo Preparation Unit; (located Mondonga).	Lt. (sg) Tanabe, (guilty) Imai, (CPO), (not guilty)	Either Adm. Furukawa; (Guilty); or Capt. Taniguchi, (not guilty)
Name Unknown	53rd Anti-aircraft Unit; (located at Amoitto; also known as Kendari #2).	Lt. (sg) Nozaka, (guilty) Maeda (Ensign) (guilty)	Capt. Taniguchi (not guilty)
Name Unknown	103rd Anti-aircraft Unit; (located at Amoitto; also known as Kendari #2).	Lt. (jg) Nakata, (guilty)	Capt. Taniguchi, (not guilty)

The above chart accounts for all of the accused, both "guilty" and "not guilty". All four units were in the same general area, within a radius of thirty (30) kilometers. Adm. Furukawa was commanding officer of the 23rd Special Naval Air Fleet, hereinafter referred to as "Furukawa's Unit"; and Capt. Sanokawa was his Chief of Staff. Capt. TANIGUCHI was commanding officer of the 23rd Special Naval Base, Kendari Dispatch Unit, it being designated hereinafter as TANIGUCHI's Unit. The chain of command under Defense Exhibit "B", showed that TANIGUCHI was subordinate to Adm. Onogi. The names of the Japanese Units in that area bear so similar designations, and are so loosely described in the testimony, that it is best to use this method of nomenclature.

The physical location of the headquarters of Adm. FURUKAWA was separate from all the other units named in the chart, it being about 15 minutes away by automobile from the Gohoku Unit (Ex 10, p 2), and 40 kilometers from Taniguchi's Unit (Ex 16, p 2). Thus, we have six (6) places to account for, the command headquarters of TANIGUCHI, the command headquarters of FURUKAWA, and the four different places of execution, (or maybe there were only two places of execution).

The prosecution offered the testimony of five live witnesses, one Indonesian, and four Japanese, plus 19 exhibits in the form of affidavits and statements. For the purpose of continuity, some of the testimony and exhibits are summarized below, prior to being taken up in the case of each accused person.

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Prosecution witnesses

Toshio Mitani, Lt. (jg), was attached to TANIGUCHI's unit. He mentioned that nine POW's were brought there early in October 1944, (R 40). Five POW's were executed there in November, 1944, and the remaining four POW's (non-commissioned officers), were executed at four nearby units as itemized in the foregoing list, (R 41-43).

Torao Sato was a civilian inspector, attached to the Tokkei Tai (naval military police), at TANIGUCHI's unit. The witness likewise saw the POW's when they were brought in, and he said they all were afterwards executed, four at separate units, and a group of five at TANIGUCHI's unit (R 45, 46, 48). One POW was taken to Mondonga in a sedan; one sent to Gohoku unit in a sedan; and two went to the anti-aircraft units in one truck; all were escorted by junior officers and enlisted men from each unit (R 48).

Johan Tomasowa (R 112-185) was an Indonesian soldier pvt 1st class, and a member of the Dutch East Indies Army for over thirteen years. Early in the war he was captured and interned at TANIGUCHI's unit, first as a POW, and then as a military prisoner serving a 20-year sentence for possessing a Dutch flag, so he said.

This witness stated he saw the nine POW's, worked and talked with them, (R 115-140). He accompanied the group of four POW's who were executed at different units, he going along as part of the native grave-digging detail (R 117-119). Each of the POW's was carried off for execution in a different sedan. The grave-digging detail was conveyed there by one "Mesman", an Indonesian driving a bus, (R 152-153). The witness testified he saw each of the four executions, he digging the graves and filling them up after burial. One POW was beheaded at Mondonga, (29th Aerial Torpedo Unit), and the other three POW's were taken to the airfield at Amuito for execution (apparently the site of the other three units). At the airfield, one large grave was dug, and the three POW's were executed in turn, about thirty minutes apart, and all buried in the same grave (R 117-121).

The cross-examination of the witness Tomasowa was never completed, which must be considered an important factor in weighing the reliability of his testimony (R 186, 394). The Trial Commission had adjourned for a month in order to allow an attempt to gather additional evidence at the site of the crimes (R 186-191). The witness Tomasowa, together with representatives of both the prosecution and defense staff journeyed by plane to the Celebes, for that purpose. While there, the witness Tomasowa became separated from the rest of the party, he going to Batavia, in order to obtain a diary which he said contained notes of the facts to which he had testified. At the time of the departure of the others for Yokohama, he had not returned, and up to the conclusion of the trial, he had not reappeared. The reason for his non-return was never satisfactorily explained in the record, except that his separation from the group was not the fault of the defense, and that he was apparently detained in Batavia. (R 191, 192, 257, 394)

MESMAN, in an affidavit (Ex 6), asserted he was an Indonesian, employed at TANIGUCHI's unit as a mechanic and truck driver. He said the four POW's involved here were placed in a bus driven by him. He first took them to Mondonga (29th Aerial Torpedo Unit), and there he actually saw one POW executed by beheading; then he drove the remaining three (3) POW's to the airfield at Amuito; the POW's were there taken out of his bus and turned over to some Japanese naval personnel, awaiting with cars. The affiant then returned to TANIGUCHI's Unit, and never saw the POW's again, he hearing they have been executed.

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TANIGUCHI (Ex 7, 15, 19), one of the accused, alleged in substance, that he ordered the POW's to be executed pursuant to a radio message received from his superior, Adm. Ohsugi; that the four POW's were put into a separate group to be executed at other units. This was done because of a decision to have those POW's executed elsewhere than TANIGUCHI's unit. As to who made that decision and the circumstances surrounding it, these will be detailed more in the review when taking up the case of Adm. FURUKAWA. Copies of the radiograms sent to and received from Adm. Ohsugi were relayed to Adm. Furukawa (accused) (Ex 15, p 2, 5).

SEIJIRO DAN (Ex 18), by affidavit, said that he was the communications officer at TANIGUCHI's unit. He first took the POW's into custody. Later he transmitted to Adm. Ohsugi the first message about the capture of the POW's, and afterwards received the radiogram from Adm. Ohsugi which gave apparent authority to have the POW's executed. The first message was sent by TANIGUCHI, and the second one, in the nature of a reply, was received by Taniguchi.

The body of only one of these four POW's was discovered, the location of the grave or graves of the other three being unknown. The Japanese claimed that the grave of the remaining POW's was obliterated by a direct bomb hit during an air raid (Ex 2, 3).

It should be noted here that the confessions of the commanding officers of the 103rd and 53rd anti-aircraft units, NAKATA (Ex 11) and NOZAKA (Ex 12), alleged separate executions and single burials at their respective units. Apparently the execution at Gohoku Unit was also separate (witness - FUTAMURA - (R 251)). There was no direct testimony from an eye-witness of the execution at Gohoku Unit, unless we accept the testimony of witness TOIASOMA, who said all three POW's were executed and buried in the same grave at Amolto (R 119, 120). Thus, there is a discrepancy as regards the places of execution of those last three POW's; whereas there is agreement as to the place of the single execution at the 29th Aerial Torpedo Maintenance Unit.

Witness FUTAMURA (formerly in the Naval Air Forces, Ensign - R 251, et seq.), said he was attached to the Gohoku Unit, and identified his commanding officer, the accused MORITAMA (found guilty). The witness had conveyed one of the POW's from TANIGUCHI's unit to the Gohoku Unit, he being told to do so by some Lieutenant (sg) of the Gohoku Unit, the witness not recalling his name or exact duties. The POW was brought by the witness in a sedan from the Tokkei Tai at Kendari, near the seacoast, (apparently TANIGUCHI's unit). The witness claimed not to have seen the actual execution at Gohoku, he saying, that after delivering the POW, he went off to a small village nearby for about three hours, where he engaged in preparing some fortifications; neither did he know anyone who was actually connected with the execution itself.

The prosecution evidence submitted regarding each of the various accused persons is as follows:

TANABE (Lt /sg/) (accused):

The accused was the commanding officer of the 29th Aerial Torpedo Preparation Unit at Mondonga, and was a subordinate of TANIGUCHI (Ex 8; R 321). There was some confusion as to the command responsibility of TANIGUCHI, (R 321, 353, 354) for the Mondonga Unit.

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Accused's affidavit (Ex 8) related that around November 25, 1944, he received a telephone message from Lt. (sg) TAKITA, Executive Officer of TANIGUCHI, to the effect that the POW's captured in October were going to be executed, and that his (TANABE's) unit would kill one of them. TANABE then sent IMAI (then a CPO) in a sedan to get the POW. Upon their return, the POW was executed by a firing squad and buried in a single grave. TANABE did not receive any instructions as to the manner in which the execution was to be performed, nor was he given the reasons for the execution.

IMAI (Accused found "not guilty") (Ex 9) said he was ordered by either TANABE (accused) or one OKITSU to go to Kendari (TANIGUCHI's unit) to escort an American POW to TANABE's Unit. The affiant conveyed him back in a sedan. The affiant also observed the execution, which was carried out by a firing squad. The accused TANABE was present there, but one OKITSU gave the order for the actual rifle fire.

MESMAN (Ex 5) (supra), by affidavit, said he was an Indonesian worker at TANIGUCHI's unit. Under instructions of the Japanese there, he took the four POW's in a bus, driving first to the 29th Aerial Torpedo Unit (TANABE's) and there the witness saw one POW executed by decapitation. This witness related the circumstances of the execution in detail, he describing the dress uniforms of the Japanese, their cheering and clapping, the position of the victim, the manner in which he was bound, the size of the grave, and the last words of the POW. The witness claimed to have observed the incident from a position in the rafters of the kitchen in his house, about 150 meters away from the scene of the execution.

TOMASOWA, an Indonesian soldier, (supra), a live witness, (R. 112, et seq., 152, 153, 154) said, in substance, he was a member of the grave-digging detail at the execution at TANABE's unit. The POW had been brought there separately in a sedan; the grave-digging detail had been brought there in a truck by MESMAN, the affiant mentioned in the preceding paragraph. TOMASOWA gave a generally similar description of the actual execution as that stated by the affiant MESMAN (Ex 5).

- NOZAKA, Lt (sg). (accused)

The accused was commanding officer of the 53rd anti-aircraft unit, and a subordinate of TANIGUCHI (Ex 11, 12, 13, B; R 353, 354). The confession (affidavit) (Ex 13) of this accused, said he was commander of the 53rd AA unit on the occasion of the execution. He had been told by TANIGUCHI that orders had been received from Adm. OHGUCHI, at Makassar, that the American POW's were to be executed. TANIGUCHI said, (quoting) (Ex 12)

"He told me that my unit would perform one of the executions. At that time I refused, saying my unit had no connection with American prisoners."

However, a couple of days later, after receiving a phone call from TANIGUCHI's office, the accused NOZAKA sent one of his junior officers to get the American POW, who was then brought back to NOZAKA's unit. About two hours after his arrival there, the POW was executed by decapitation. (Quoting, Ex 12, accused's affidavit)

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"The officer that went to get the PW had been told by TANIGUCHI that he, (the PW) should be executed in a quiet and secret manner, and in the Japanese manner. None of us wanted to do it, so we drew lots to see who would carry out the orders. Three of the young officers drew lots, and in that way, it was decided that Ensign MAEDA would carry out the execution.... The execution took place right near the men's quarters. There was probably about ten men right at the scene...."

MAEDA (Ex 13, affidavit) (accused, guilty), says he was a junior officer (Ensign) at the 53rd AA unit, and a subordinate to NOZAKA (accused). This affiant executed an American POW on orders from the accused NOZAKA, on November 26, 1944, the affidavit saying, (quoting),

"About one-thirty in the afternoon, NOZAKA came into the officers' quarters and said the POW was there, and he wanted a volunteer to execute the man. No one wanted to do it, so NOZAKA said it had to be done, and told me that I would be the one."

This affiant performed the execution by sword, and then (quoting), "...several persons who had been watching, filled in the grave. Then rocks were piled on the grave, and everyone departed. The execution took place about 100 meters west of the quarters.... No natives were present."

Witness TOMASOWA testified that all three POW's were buried in one grave, at the Ampito airfield, (R 117-121) other than the execution at Mondonga.

MAEDA, Ensign (accused)

This accused was stationed at the 53rd anti-aircraft unit (Ex 13), and was a subordinate of the accused NOZAKA (above). The facts concerning this accused are related in the above concerning "NOZAKA."

NAKATA, Ensign (accused)

He was commanding officer of the 103rd anti-aircraft unit, and a subordinate of TANIGUCHI (Ex 11, Ex B; R 353, 354). His confession in the form of an affidavit (Ex 11) alleged facts relating to his duties and the execution. He was informed by telephone by TANIGUCHI's Unit to send there to pick up an American POW, who would be executed at the 103rd AA unit. That some person with Kendo (sword) training would execute the POW, and the execution would be conducted in the proper manner in the vicinity of the unit, confidentially. This accused sent his staff car with his senior petty officer to get the POW. Upon their return, the execution took place after about two hours, in "a little valley between the sailors' quarters and an air-raid shelter."

A grave had been prepared, and there were present five or six grave diggers, the senior petty officer, the affiant, and the executioner, one OTANI. The executioner OTANI was killed a week later by a bomb. After the execution the victim was put in the grave and covered up with dirt. There were no other bodies in the grave. There was no marker put on the grave because it was supposed to be a secret. The accused NAKATA insisted in his affidavit (Ex 11) that he accepted full responsibility for this execution, quoting:

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Q. Are you positive that OTANI is dead?
A. Yes, I am. Since he is dead, I will accept the responsibility for this execution.

Q. Did you expect to have to accept the responsibility for this crime?

A. Yes, I did.

Q. Did you think that your unit killed the only American?

A. No, I believe the 53rd killed one too. I think the Gohoku unit did too.

Q. Did you make any protest to TANIGUCHI about doing it?

A. No, I just did as I was told.

Witness TOMASOWA (R 112) testified as before mentioned and related the fact that three POW's were executed at one place, one-half hour apart.

MORITAMA, Captain (accused)

This accused in his affidavit (Ex 10), said he was the commanding officer of the Gohoku unit; that it was under the control of the 23rd Naval Air Unit, of which Adm. FURUKAWA (accused) was the commanding officer. MORITAMA was also identified as the commanding officer of the Gohoku Unit, in the affidavit of Adm. FURUKAWA (Ex 17).

The accused MORITAMA denied all knowledge of and complicity in the execution, he saying he learned of it sometime after it occurred (Ex 10). Witness Sato said he heard of an execution taking place at Gohoku Unit (R 48).

Witness FUTANURA, Ensign, (R 252) disclosed he was attached to the Gohoku Unit, and was a subordinate of MORITAMA. In addition to the facts related hereinbefore in the summary of some of the various witnesses, (see "In General"), this witness said he delivered the POW to the building housing the senior officers' mess, turning him over to the same officer who ordered him to bring the POW. He said he did not believe any other persons were present when he delivered the POW, but about four or five persons were around the entrance to the building, he not recalling whom, but they were attached to the Gohoku unit. That building was within the unit compound. The delivery of the POW was made around 4:30 p m, this witness leaving immediately to go to Repo Repo (nearby), and returned about three hours later. Upon his return, and while he was at the junior officers' mess, the witness learned from conversations, that the POW had been executed during the absence of this witness. The witness heard the POW was brought to the Gohoku unit, as a result of a phone call from TANIGUCHI's unit, but did not know the why's or wherefore's thereof. At the time of the obtaining of the POW, he was turned over to him by an ensign of the Tokkei Tai, but no orders or instructions were given (R 256, 257, 258).

The affidavit of the accused Moritama, (Ex 10) stated, "Masuda, one of the staff officers, my executive, told me that one of the young officers did it." Quoting:

Q. Did he tell you where it was done?

A. No.

Q. Are you familiar with the order that TANIGUCHI received from OHKUCHI concerning the execution of the American POW?

A. I never heard of it.

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Q. You do know that nine Americans were executed in the Kendari area in November 1944?

A. I heard about it two or three days after it happened. My Executive told me about it.

Q. Where did the Americans come from?

A. I don't know.

Q. Why did he tell you about it?

A. Just as gossip during the meal.

Q. Did you ever hear about the execution at the 53rd AA unit on the same day?

A. Yes, I heard about it later.

Q. Did you hear about the execution at the 103rd AA unit?

A. No.

The witness TOMASOWA (R 119, 120, 121, 152, 153) testified as before stated that three POW's were executed at one place.

FURUKAWA, Rear Admiral, (accused)

He was commanding officer of the 23rd Naval Air Unit. Under his command was also the Gohoku Unit, with its commanding officer, Capt. MORITANA, (accused, found guilty). The affidavit of IMAI, (CPO), Ex 9, alleged that Adm. Furukawa had command also over the 29th Aerial Torpedo Preparation Unit, (Mondonga).

The affidavits of the accused (Ex 16, 17) said he had no units under his command in the area other than Gohoku unit. "However, as the Senior Officer in the area, I did call a meeting of all the separate Unit Commanders to discuss a joint defense plan in the event we were attacked. We met together about every month from Oct 1944 until Jan 1945.... I was in a position where I felt free to ask these units for favors if I wished." (See also Ex 14, p 2, statement of Sanokawa).

Quoting (Ex 16, p 1):

Q. Did Commander SONOKAWA (chief of staff) sit in these joint defense meetings too?

A. Yes, he did.

Q. He too, then, would have felt free to call on the other units for a favor if he wanted?

A. Yes, he would.

The accused recalled the capture of the POW's involved here. He denied knowing of the existence of the Tokkei Tai (the naval Kempei Tai). He denied knowing where or when the POW's were executed, and said he heard about it a month later, (Ex 16, p 3). He denied all knowledge of the carrying on of the executions. He denied asking TANIGUCHI to deliver any of the POW's for execution. He said that when he was riding in his automobile, it usually carried a little yellow pennant on the front, which was displayed only when a person of Admiral rank was in the car. No other Admiral visited him in November 1944. He went only once to the Aerial Torpedo Preparation Unit in September, 1944, upon the occasion of his initial arrival in the Celebes. He visited all units in the general area at that time (Ex 16, p 4). He had telephonic communication to all units in the Kendari District, including TANIGUCHI's unit. He had no official connection with other units in the Kendari District, as a superior commanding officer, except as chief of a defense plan which became operative in the event of attack by a landing force (Ex 16).

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Witness TOMASOWA (R 119, 158, 162, 163, 164, 166, 168) said the accused, Adm. FURUKAWA was present at TANIGUCHI's unit in April, 1944, and in Sept 1944, on inspection trips. Also he was there at other times, including being present at the interrogation of the nine POW's (R 158, 162). The witness further saw him at the execution scene at the 29th Aerial Naval Torpedo Unit, (Moconga), FURUKAWA being there in his sedan, which flew a yellow pennant on the front of the car (R 119, 162).

It is important to note here that the witness TANAWASA could not identify the accused FURUKAWA in the court room, he not recognizing him when asked to point out any persons who were present at the scene of the various executions (R 119). It should be further noted that Adm. FURUKAWA was not present in the Celebes until September, 1944, being transferred there from Japan (Ex 17; R 352). Witness, Adm. ITO, was his predecessor (R 352).

One statement and two affidavits of TANIGUCHI (Ex 7, 15, 19) gave some facts showing that apparently the headquarters of FURUKAWA's unit had some knowledge of the planning and accomplishments of the executions (quoting from Ex 7, p 3)---

"Lt. TAKITA brought the message to me, and I told him that he may as well go ahead with it. TAKITA said that he would make the arrangements and I told him that would be fine, and that I would leave it up to him.... About this time the Tokkei Tai received orders from the 23rd Air Unit at Kendari (FURUKAWA's unit) to send four of the prisoners to them. TAKITA brought the message to me. This order came from Commander SONOKAWA (the chief of staff for FURUKAWA). I saw no order. TAKITA told me about it, and I don't know how the message was sent. TAKITA said that the 23rd Air Unit wanted to execute four. The orders from Admiral Ohsugi were to execute the nine prisoners, so I didn't object to sending them for all that I was interested in was that they be executed, and the place and by whom was immaterial. I heard that a car was sent from the 23rd Air Unit to take the four back as it was about an hour's drive (Ex 7, p 4).... TAKITA reported to me that the men had been executed, and also brought a radio message for my signature. It stated that the prisoners had been executed as ordered by radio message number ... (?).... I signed this message, and it was sent to Admiral Ohsugi, and I never heard more."

- Q. How do you know the four men ordered by Commander SONOKAWA were executed?
- A. One of my subordinates received a report from the 23rd Air Unit, stating that the four men had been executed on the same day. I don't know who received the report nor the one who sent it.

- Q. Was this an order from Commander SONOKAWA or a mere request?
- A. It was an order from Commander SONOKAWA.

Statement of TANIGUCHI: (Ex 15, p 3), quoting:

- Q. Do you know if SONOKAWA issued this order in his name or in the name of Admiral FURUKAWA?
- A. It came directly from SONOKAWA to TAKITA.
- Q. Do you think that Admiral FURUKAWA was aware of this order?
- A. I do not know.

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- Q. Do you know who came from the 23rd Naval Air Unit, to receive the four Americans?
- A. I am positive that a vehicle belonging to the 23rd Naval Air Unit came for the prisoners. However, I do not know who accompanied it.
- Q. What authority did you feel that you had which allowed you to turn over the four Americans to Admiral FURUKAWA's men?
- A. When TAKITA told me that SONOKAWA had asked for the four Americans, I took it for granted that he was passing on an order issued by Admiral FURUKAWA.... I figured it was all right to give four of the men to Admiral FURUKAWA. Also, FURUKAWA was an Admiral, and I could not go against his wishes.
- Q. Did you at any time make a request to Admiral FURUKAWA for confirmation of his request for the four Americans?
- A. No.

(Ex 19) (Statement of TANIGUCHI) quoting:

"The other 4 POW's were ordered by the Air Force (Senior Staff Officer) to be sent to the airfield for execution. This was done."

The affidavit of SAPOKAWA, Chief of Staff to FURUKAWA, (one of the accused found "not guilty") said in substance (Ex 14), that he knew nothing about the execution of the four POW's involved here prior to its happening. He had heard the 9 POW's were executed, but did not know whether TANIGUCHI or CHUUGI ordered it. He gave his version of the chain of command in that area, saying Adm. FURUKAWA had no direct command responsibility of other units in the Kendari area, but felt free to ask favors of other units. He further said the Admiral's car always carried a yellow pennant when an Admiral was riding in it.

The affidavit of Moritama, (C.O. of Gohoku unit, found "guilty") said in substance (Ex 10, p 3), that Adm. FURUKAWA came to the airfield frequently, and sometimes would come to the affiant's office, or stay for a meal.

FURUKAWA had operational and tactical control of the 103rd anti-aircraft unit, and all others in the area (affidavit of NAFATA, Ex 11, p 6).

b. For the Defense

NOZAKA, MAEDA, NAKATA, TANABE, MORITAMA (all accused):

The above five accused, after being first duly warned, elected not to testify in their own behalf (R 368).

No testimony was offered in their defense, they deciding to stand upon the evidence admitted on behalf of the prosecution.

FURUKAWA (accused):

The accused after being first duly warned, elected not to testify in his own behalf (R 368). The defense offered the testimony of TANIGUCHI, as a live witness (R 302, et seq, 284, 374, 378; argument of defense counsel).

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TANIGUCHI denied any direct orders were received from FURUKAWA (R 304, 306), but only through SANOKAWA, the Chief of Staff (R 303-306). That it was impossible for a plan of execution to have been composed between TAKITA (his executive officer) and the accused SANOKAWA and FURUKAWA (R 327, 328). At the time TANIGUCHI had telephoned to FURUKAWA's headquarters about the executions prior to the formation of the initial plan thereof, he was not sure he was actually speaking to SANOKAWA, not knowing his voice, TANIGUCHI merely having asked the telephone operator to be connected with the senior staff officer (R 348-351).

4. Opinion

The defense made strong assertions of a failure of proof as to the corpus delicti regarding three of the PW's, those who were executed at the 103rd AA unit, the 53rd AA unit, and the Gohoku unit. Their bodies were never located. Yet, considering the whole testimony there was strong enough circumstantial evidence to establish properly the corpus delicti, both as a matter of law and of fact. It was proved to a reasonable certainty that all four of the POW's in that group were executed.

With regard to four of the accused, TANABE NOZAKA, NAKATA and MAEDA, each of them submitted written confessions, which were admitted in evidence on behalf of the prosecution. There were sufficient facts offered in general corroboration to justify the commission in finding those accused "guilty" of the offense charged. The presumption of innocence was overcome by evidence of sufficient probative value.

As to the accused, MORITAMA and FURUKAWA, the matter of their guilt or innocence has proved a difficult problem. Weighing anew the evidence, it is considered their guilt has not been established beyond a reasonable doubt.

At the close of the prosecution's case, the defense made a request for a finding in favor of those two accused, MORITAMA and FURUKAWA. That motion was properly overruled, for a prima facie case had been established as a matter of law. As to each of them, there was more than a mere scintilla of evidence. For the purpose of that motion, the trial commission could not, at that stage of the case, consider the weight of the evidence, nor its credibility; there was then no factual question before it. The trial commission had presented to it only a question of law, i. e., the legal sufficiency of the prosecution's case (miscellaneous Dist. of Col. cases, cited in 76 W.L.R. 1106).

MORITAMA (accused)

Taking up the matter of MORITAMA, the record of the trial is considered not to be sufficient to sustain the finding of guilty. The facts pointing to his guilt are entirely circumstantial, and, as such, in this particular case, do not clearly establish the gravamen of the offense, nor do they point directly and logically to the accused as the culprit, as it should do (U S vs Shoidi Kadomtus, CAP Bd of Review, 8 Oct 48).

The POW was brought directly to the senior officers' mess-hall at the Gohoku Unit by witness FUTAMURA. From that happening, the prosecution argued, it was the situs of the accused's office, and, by inference, the accused was necessarily present at or near the senior officers' mess; or that the presence of the POW was known to other senior officers in and around the entrance to the mess-hall, and consequently, by inference, the information was communicated to

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the accused by his subordinate officers, or the accused must have known of the presence of the POW and the purpose for which he was brought there. That conclusion is really "an inference based upon an inference" rather than a logical inference deduced from evidentiary facts.

This ~~viewer~~ ^{reviewer} can take judicial notice that in the American Navy, it is the custom for the commanding officer of a ship or station to dine alone at all meals. It is not known what is the practice in the Japanese Navy, but it is mentioned merely to show that the presence of the accused at the senior officers' mess was merely a probability. Possibly MORITAMA was there, and possibly he was not there. A man should not be sent to prison merely on guesswork.

It may be considered that in so important matter as the execution of a POW, the commanding officer of the unit knew, or should have known of the taking place of that event, but, that is only a possibility or suspicion. It is conceivably possible that he did not know about it, as it was an isolated incident. As the whole affair took only a few hours from the dispatch of the escort to get the POW, the presumptions, inferences and speculations are evenly balanced, and are not compelling in favor of guilt.

A familiar rule of law exists in criminal cases, that where a situation is susceptible of two interpretations, one of guilt and one of innocence, then the court will adopt the interpretation which leads to innocence. The only thing here which might swing the scale in favor of guilt is the fact that the accused failed to testify. But, in his affidavit, submitted by the prosecution (Ex 10), he denied guilt or knowledge of the occurrence prior to its happening. The most which could be expected of his probable oral testimony was that cross-examination might weaken his denials. However his failure to testify cannot be construed as an admission of guilt on his part, for such failure to testify is also consistent with innocent conduct, as many reasons enter into such a refusal to take the witness stand. SCAP rules do permit the prosecution to comment unfavorably and adversely upon such refusal to testify. The trial commission can give such refusal to testify whatever weight or bearing it seems appropriate. The SCAP rules do not say the Trial Commission is bound to regard it adversely.

In summary, while there is a strong possibility or suspicion that the accused was present at the scene or knew of the happening prior to the time of the execution, we are not certain of it, only suspicious. The accused's connection with the atrocity is not shown by clear and unequivocal evidence. The testimony submitted at the trial does not permit such an inference of guilt to follow as a matter of logic, but merely permits speculation as distinguished from a legal inference.

It was unfortunate that more direct testimony could not be procured. We are cognizant of the difficulties facing the prosecution when they are compelled to rely entirely upon Japanese witnesses.

Under the civilized systems of law, the government demands justice, not victims. A brutal murder of an American POW did take place. But, from that happening, we must not insist a victim be sacrificed in mere expiation.

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FURUKAWA, Admiral (Accused)

The same arguments as to inferences, speculations, suspicions, and conclusions, as set forth above in the MORITARA opinion, apply with equal force to this accused, FURUKAWA, and are incorporated into this portion of the opinion.

The main evidence against this accused is that the witness, TOMASOWA, claims to have seen him at the scene of the execution at the Aerial Torpedo Maintenance Unit, at Mondonga (R 119, 162). The witness buttressed his identification by insisting it was the same Admiral who had visited TANIGUCHI's Unit on an inspection tour in April, 1944, and in September 1944, as well as being seen at the interrogations of the POW's. His testimony is greatly weakened by the fact the prosecution conceded the witness was mistaken about the inspection visit in April 1944, for the accused was then still in Japan, he not arriving in the Celebes until September 1944 (Ex 17; R 168, 352). The prosecution also thought the Admiral did not interrogate the POW's, but that it was his Chief of Staff, Capt. SONOKAWA, instead (Ex 14, p 3; Ex 15, p 6; R 384).

The witness TOMASOWA also testified about seeing a sedan at the scene of the execution, and it was flying a small yellow pennant. Other evidence indicated such a pennant was flown only when an officer of admiral rank was riding in the car. This accused said no other Admiral was present in that area during the period around November 22, 1944, the time of the executions. Thus, it would seem logical to assume the accused was actually present in his car at that particular execution. But, another important factor to be considered is that witness TOMASOWA, although he asserted he saw the accused Admiral, often, could not identify him in court. This also is understandable, for a person can often identify another by association with the manner of dress, i.e. a military uniform, whereas at the trial, all the accused wore the same fatigue prison clothing, were seated without regard to rank, and several years had elapsed since the witness had seen the accused in person. These factors can be used to explain the failure of the witness to identify the accused in court.

It is considered that this witness exaggerated things in his testimony, in his positive assertion that this accused made an inspection of the Taniguchi Unit in April 1944. If the witness was so sure of his identification in those days when his memory was fresh and when the accused wore a military uniform, his testimony is weakened by his positiveness in placing the Admiral there in April 1944, when, in actuality, the accused was still in Japan.

The witness did say he saw a sedan flying a yellow pennant on those inspection trips and saw a similar pennant on the sedan at the execution ground, which might lead one to say the witness was observant. However, it must be remembered that all military personnel, even privates, are cognizant of the various insignia of rank, and such statement about a yellow pennant is not as a result of sharp observation but is a routine affair in military life. This witness went further than saying he saw a yellow pennant on the sedan at the execution scene, he insisted he saw the accused there and that he knew the accused well, from his previous inspection trips and travels in that area. The testimony of this witness is the only link which directly connects the accused with the execution at Mondonga.

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Viewing the testimony as a whole, there exists a reasonable doubt as to the accused being present at that particular place, when coupled with the accused's denials of all knowledge of the executions (Ex 16, 17). Another factor is that the cross-examination of the witness TOMASOWA was never completed due to his failure to return from Batavia, his absence being through no fault of the defense. The cross-examination of this witness, insofar as it appears in the record, shows a proneness to exaggeration and possibly outright untruths. Testimony, in the form of depositions, taken at the scene in the Celebes, of persons who knew that witness there (R 193, 198) seems to indicate that the witness TOMASOWA erred in many of his statements concerning his own personal living conditions during the years he was present in the area of Taniguchi's Unit.

The other aspect of the case against this accused lies in the testimony of Taniguchi, to the effect that a telephone call was received from the accused's Chief of Staff, SANOKAWA, regarding the distribution of the POW's for the execution. But the connection of the accused FURUKAWA therewith is all based upon hearsay, in that the witness TANIGUCHI says he received that information from his Executive Officer, Lt. TAKITA, who was making the arrangements for the execution. Hearsay evidence has probative value under SCAP rules, but is not to be construed as compelling evidence in all cases.

If the orders for the distribution of the POW's did come from FURUKAWA's Unit, as it so appears, we have to base it entirely upon the testimony of TANIGUCHI, an accused and necessarily somewhat hostile to the other accused, and is, in itself, based upon hearsay; he related what was told to him by his Executive Officer, TAKITA. On the other hand, it is conceivable that the distribution could have been instigated by Lt. TAKITA, the Executive Officer, as his own idea, and ratified by TANIGUCHI. Also, it is conceivable, and well within the probabilities, that FURUKAWA's Chief of Staff did it on his own responsibility. All the different military units there had a close working relationship to each other for supply and combat purposes and possibly felt free to call on each other for such things as a distribution of POW's for execution.

The guilt of FURUKAWA, if it does exist, flows entirely from two sources:

- (1) His position as commanding officer of one of the units (Gohoku), and as overall commander for combat purposes of all the units named as places of execution;
- (2) Arising as a consequent assumption that because his Chief of Staff, SANOKAWA, asked for the distribution, it may be assumed, therefore, that the Chief of Staff acted for and on behalf of the commanding officer, FURUKAWA, and with his knowledge.

Taking up position (1), that of command responsibility, it was conceded by both the prosecution and defense that a commanding officer, merely by reason of his position, is not held responsible for an isolated case of an atrocity, unless it is definitely shown he actively participated in the act. The occurrence of a series of atrocities and similar acts, closely connected in time and purpose, can be traced to one in the command position, if he is in a reasonable position to have acquired knowledge or should have acquired such knowledge of those occurrences taking place.

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As to the second point, that this Chief of Staff SANOKAWA acted as a duly authorized agent for FURUKAWA, a distinction must be drawn between routine command responsibility in military tactical affairs, and the responsibility for criminal acts. A criminal intent cannot be imputed to a superior officer merely by reason of the differences in the relative positions of the subordinate and the superior. For isolated incidents of criminal acts an independent specific criminal intent must be shown to hold each person criminally liable. It is true that intent can be presumed from the performance of certain acts, by both the subordinate and superior. But a mere criminal act by a subordinate will not necessarily impute that criminal intent to a superior officer, based upon the command relationship standing alone. There must be a showing the superior officer joined in the criminal act by some specific accomplishment on his own part.

Therefore, it is error for the prosecution, or the trial commission, to assume that FURUKAWA must be held liable for the crime because it is a natural inference he knew of, ratified, or is held responsible in a military sense for the wrongful act committed by his subordinate. Even if he was held liable in a military command sense for an error committed by his subordinate, yet, in the field of criminal law, where the act concerned is outside the usual scope of military tactics, a special showing of knowledge and definite participation must be made.

While on this subject, it should be noted that the trial commission made a finding of "not guilty" as to SANOKAWA, the Chief of Staff to FURUKAWA. That finding was apparently based upon the fact that an alibi was produced for SANOKAWA, he being placed, by defense witnesses, as absent from the Kendari Area during the executions, he then attending a staff meeting in Java. The only evidence connecting SANOKAWA with the executions was the testimony of TANIGUCHI, who related the various conversations he had with Lt. TAKITA, who had told him that SANOKAWA had ordered the distribution of the POW's. When TANIGUCHI had telephoned to SANOKAWA, just prior to the distribution plan and in reference to the radiogram order received with regard to the executions, TANIGUCHI testified that he "assumed" he was talking to SANOKAWA, but he was not sure, as he did not know his voice, and on the telephone he had merely asked the operator to be connected with the senior staff officer. If SANOKAWA was in Java, then TANIGUCHI was actually talking with the "acting" senior staff officer (R 348-351).

In any event, SANOKAWA was found "not guilty". It appears that the evidence against FURUKAWA is not stronger than the evidence against SANOKAWA, except for the testimony of TOMASOWA, who had placed this accused at the scene of the execution at Mondonga. The testimony against SANOKAWA and FURUKAWA is thus about equally balanced in value. Therefore, to be consistent, the trial commission should have also found FURUKAWA to be innocent of the charge and specification.

The record, as to the accused MORITAMA and FURUKAWA, wholly fails to establish a circumstantial case against them. The most that can be said for the case of the prosecution is that it indicates that the accused may have participated in the executions. Circumstantial evidence cannot be said to require, as its logical conclusion, a finding that either of those two accused participated in the executions.

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At no place in the entire record is there the suggestion of independent initiative to order the executions insofar as the following accused are concerned: TANABE, NOZAKA, NAKATA, MAEDA. They did no more than obey the orders of their superior officer. Insofar as TANABE, NOZAKA and NAKATA are concerned, they were Unit Commanders and could be held to a greater degree of responsibility than MAEDA, who was a junior officer of NOZAKA and under his command. The question regarding holding these four accused responsible for the executions is one fraught with great difficulties, as all of them did no more than obey orders of their superior officer, which is the first law of any military establishment. It is, therefore, concluded that all of the findings of the commission were correct as regards these four accused but that the sentences were excessive and should be reduced, as indicated in the Recommendations section of this review.

The Commission was constituted by proper authority and had jurisdiction of the accused and of the offense alleged. There is no evidence that the accused, or any of them, were not sane at the time of the commission of the alleged offense or at any time of trial, and sanity was not an issue. The Commission did not err in any substantial respect in admitting or excluding evidence under the prescribed rules governing the trials of war criminals. Its rulings upon the various motions made during the trial were correct in substance. The accused were most capably defended, being represented by able American advisory counsel and Japanese attorneys. The sentences as imposed were legal. The findings and sentences were returned upon the concurrence of two-thirds of the members of the Commission. The Defense Appeal Brief has been duly considered in the preparation of this review.

5. Recommendations

It is recommended that the findings and sentences be set aside and disapproved as regards the accused, MORITAMA and FURUKAWA.

Clemency petitions were submitted for all of the accused, except NOZAKA. The clemency petitions for NAKATA contained over 21,000 signatures and those for MORITAMA contained over 47,000 signatures. The petitions for MAEDA, FURUKAWA and TANABE had signatures numbering in the hundreds. They all contain the usual piteous appeals for mercy.

As regards the accused, NAKATA, TANABE, NOZAKA, and MAEDA, it is recommended that clemency be extended to them by reducing their sentences to seven (7) years imprisonment at hard labor; this course being taken because there was no suggestion of independent initiative on their part in connection with the executions.

Owing to the length of time the accused have been in confinement prior to the date of sentence, it is further recommended that one month's confinement at hard labor be remitted as to the accused NOZAKA and NAKATA respectively. The accused, TANABE and MAEDA were confined less than three months prior to the date of sentence and no recommendation for remittance of their confinement is made as to these two accused.

6. Action

Forms of Action designed to carry the above recommendations into effect are hereto attached.

ALBERT LYMAN
Reviewer
Judge Advocate Section

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The briefs supplied by the defense and the prosecution have been carefully studied. The following points in addition to those set forth in the foregoing review should be highlighted:

There was no court-martial authority or jurisdiction in the Kendari district where the prisoners were held and where accused Furukawa had operational and tactical control (Ex 16, p 5). It was, therefore, manifest to Furukawa that the order to kill the flyers, which came from Admiral Ohsugi, was an order to kill without trial and an illegal order. As the order was transmitted and implemented, it nowhere appears that any of the participants made the slightest effort to ascertain that the proposed killings were lawful. When one undertakes to destroy human life, either voluntarily or under a purported order, he is duty bound to make reasonable inquiry to ascertain and determine that the homicide is lawful and that the order directing it has a reasonable color of legality. It is not required that a person ordered to commit a homicide must examine the proceedings from start to finish in the guise of a reviewing authority. However, the degree of care which must be employed to determine the lawfulness of the order is in direct proportion to the responsibility of the position which the person charged with carrying out the order occupies.

The following quotation from addenda to review in case No. 289 is apropos of this point:

"It should first be noted that there were certain actions which any person of mens rea inherently knows are offenses against morality and unless legally justified, are crimes. " * * even without the specific laws set up by the conventions of nations, such crimes are in themselves so basically and naturally wrong that they outrage the conscience of the normal man." (P. 6, Case 19, US vs Fukami). One of these is homicide. "The law presumes all homicides to be committed with malice aforethought and to constitute murder; the burden is on the accused to show circumstances of alleviation, excuse, or justification." (1 Wharton's Criminal Law, 12th Ed, p. 628-630). It is the law that a criminal offense can be committed without intent, malice, or willfulness (22 Corpus Juris Secundum, p. 91)."

Each of the accused in the case at bar was an officer in the Japanese Navy. It cannot be said that they were ignorant and trusting members of a firing squad who are marched in squad formation to the scene, ordered in a group as part of the military routine, deliver their fire and are marched away. These accused, persons presumably of training and intelligence, are men who could, and without doubt did, observe the manifest pointers which marked these killings as capricious and illegal morale builders. The scene at "Mondonga" is illustrative. Personnel were called out in their dress uniforms and attended the tragi-gala scene with cheers, applause, and drinking. This is not the setting of a solemn military execution under legal orders. In none of the four executions did there appear a formal order to execute, such as the common knowledge of mankind associates with legal executions. In no instance does an accused assert that he made inquiry of any nature whatsoever to secure such an order or to learn if there was any legal background or authority for the killings. They were a part of an illegal act. Their knowledge or lack of knowledge of its illegality goes to the element of wilfulness and intent and is to be considered as mitigation or aggravation of the offense.

Furukawa. It is manifest that this accused was acquainted with the plan to beheld the prisoners of war in ample time to have prevented the consummation of these illegal acts but that he was not so minded. He had the operational and tactical control over the unit commanded by Taniguchi, the officer who controlled the prisoners. Furukawa's chief of staff requested possession of the ill-fated four the same day the order came from Ohsugi to Taniguchi to kill them. Two or three days then elapsed before the deed was accomplished. During that time a copy of Ohsugi's order had been sent to Furukawa by Taniguchi. When the request was made by Furukawa's chief of staff that Taniguchi turn the prisoners over,

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the latter, a Navy captain, "took it for granted" that the order was Furukawa's, knowing full well that a chief of staff would not act on such an important matter without the knowledge and consent of his commander (cf. Ex 7, Ex 10, Ex 11, pp 4, 5, Ex 15, Ex 16, Ex 17). Taniguchi knew Furukawa desired the prisoners as exemplified by his statement that since Furukawa was an admiral he could not go against his wishes (Ex 15, p 4). The matters affecting the flyers' capture came under Furukawa's jurisdiction because they related to combat operations (Ex 15, p 2); Furukawa frequently exercised his power as supreme commander of the area by issuing orders to all unit commanders (Ex 15, p 6).

The close liaison between Furukawa and his chief of staff is indicated by the evidence that the latter even reported such details as a request for a prisoner of war interrogator to his chief (Ex 14, p 3). Such matters were treated as operational and therefore under Furukawa's control (Ex 16, p 1). In fact, Furukawa never denied these facts on the stand nor asserted that the chief of staff acted without his knowledge or authority. He did nothing to stop the killings nor did he object to them in any way although his headquarters had full knowledge of the facts for two or three days time from the arrival of Ohsugi's order until the killings. In fact, the evidence, viewed from all corners of the case, establishes that the illegal homicides were actively furthered by Furukawa's actions. In arriving at these conclusions, it is not necessary to take into account the testimony of Tomasawa that Furukawa was actually present at the scene of one of the homicides. It should be remarked that although some discrepancies appeared in the testimony of witness Tomasawa, much of his more important evidence was corroborated and was not discredited. The fact that he was not returned to the trial in time to permit a more complete examination does not necessarily invalidate his testimony or destroy its force. It is observed that the prosecution evidenced anxiety to secure this additional right (R 371), but that the commission and the defense did not desire it (R 259, 394).

The case against Furukawa, therefore, is believed to have been established beyond a reasonable doubt. The sentence of 20 years under such circumstances and in view of his command position and ability to have resisted successfully the accomplishment of this illegal design, is lenient. Approval is recommended.

Moritama. This senior Navy captain, commanding the Gohoku unit, asserted ignorance of the killing of one prisoner by a responsible member of his unit. The circumstances shown in the evidence established beyond a reasonable doubt that he did have such knowledge. Futamura, an ensign of his unit, was ordered by one of Moritama's senior officers to bring a prisoner to the unit. He took two sailors of Moritama's command in an official unit sedan, seduced the prisoner and delivered him openly, in the messhall for senior officers, to the official in Moritama's command who requested him. This occurred in front of four or five other members of the unit (R 253, 254). The prisoner was delivered to Futamura by the jailers (R 257) without his even making a request for such delivery (R 258). The accused was very infrequently absent from headquarters (Ex 10, p 2). It is manifest beyond a reasonable doubt that these things were impossible to accomplish without the knowledge and authority of Moritama. Such an important event as delivery of a fallen flyer, a prisoner of war, for killing by members of this commander's unit is not such a common and routine occurrence as would call for action by anyone less than the commander himself. Moritama was not commander of a vast installation but only of a service unit which was the equivalent of a large battalion. The findings of the commission as to Moritama were justified and approval is recommended.

The ten year sentences as to Moritama, Tanabe, Nakata, Nozaka, and Maeda, are not excessive under the evidence. These accused are in the position of accomplishing an illegal order without objection or reasonable inquiry. Sentences

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of ten years for actions under similar circumstances were approved in the case of Inouye, Case No. 258, with the exception, in the Inouye case, that the accused were of lower rank than, and thus not as strictly chargeable as the accused in the instant case. Under these circumstances, the undersigned has no choice except to recommend approval of the sentences of the commission as rendered.

Alternate proposed actions to implement these recommendations are attached.

ALLAN R. BROWNE
Lt Col., JAGC
Army Judge Advocate

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(n 26 of 26, Furukawa et al, Case # 307)

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